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Supreme Court, U. S.

F I L E D

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No. 97-115

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

MARGARET KAWAAUHAU and SOLOMON KAWAAUHAU,

Petitioners,

v.

PAUL W. GEIGER,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

JOINT APPENDIX

NORMAN W. PRESSMAN*

TERESA A. GENEROUS

GREENSFELDER, HEMKER & GALE, P.C.

10 South Broadway, Suite 2000

St. Louis, Missouri 63102

(314) 241-9090

RONALD J. MANN

Assistant Professor of Law

University of Michigan School of Law

625 South State Street

Ann Arbor, Michigan 48109

*Counsel for Petitioners Margaret Kawaaauhau
and Solomon Kawaaauhau*

EDWARD B. GREENSFELDER, Of Counsel

*Counsel of Record

LAURA K. GRANDY,* ESQ.

MATHIS, MARIFIAN,

RICHTER & GRANDY, LTD.

720 West Main Street

Suite 100

Belleville, Illinois 62220

(618) 234-9800

Counsel for Respondent

Paul W. Geiger

PETITION FOR WRIT OF CERTIORARI FILED JULY 15, 1997
CERTIORARI GRANTED SEPTEMBER 29, 1997

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Case No. 89-01062

In The Matter Of:
PAUL W. GEIGER,
Debtor.

MARGARET KAWAAUHAU
and SOLOMON KAWAAUHAU,
Plaintiffs,

vs.

PAUL W. GEIGER,
Defendant

St. Louis, Missouri
September 6, 1990
9:00 O'clock A.M.

AP No. 89-0154

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE DAVID P. McDONALD

APPEARANCES:

For the Plaintiffs: NORMAN W. PRESSMAN, ESQ.
DANIEL L. GOLDBERG, ESQ.

For the Defendant: MICHAEL K. SHEEHAN, ESQ.
WARREN GEIGER, ESQ.

Audio Operator: MATTHEW A. PARKER

FRED WILLMAN — ELECTRONIC LAW REPORTING
15 Persimmon Lane, Eureka, Missouri 63025
(314) 938-6631

* * *

[23]

MR. GOLDBERG: Judge, would you like me just to read the questions and answers into the record?

THE COURT: Right, Yes.

MR. GOLDBERG: Okay. Judge, we would go first with the deposition of — or the trial testimony of Dr. Geiger, which is Plaintiffs' Exhibit 4. We would direct the Court's attention to page 19, picking up on the fourth line. And this is the testimony of Dr. Geiger.

"A I said she asked me point blank, 'Do you think you can save my leg,' on January 4th. And I told her I didn't know. This is a real serious problem."

Continuing on to page 38, line 21.

"Q And it's your testimony today that as of that time you recognized that the standard of care for this patient was Penicillin by the intravenous route for her streptococcus infection, is that correct?

"A Yes. But she wouldn't permit me to give it."

MR. SHEEHAN: Could you hold a second? Thank you.

MR. GOLDBERG: Continuing on line 25,

"Q Do you acknowledge that the proper standard of care from the 7th of January until the morning of the 12th, when you discontinued her antibiotics, was Penicillin intravenously?

"A I'll repeat my same answer.

"Q And what was that?

"A That that would be best, but sometimes we're not [24] permitted to give the best.

"Q No. The question was, do you acknowledge that that was the standard of care?

"A Yes."

That's all from the trial transcript of Dr. Geiger, Your Honor.

THE COURT: All right.

MR. GOLDBERG: Next we would direct the Court's attention to Plaintiffs' Exhibit 1, page 40. This is the trial transcript of Margaret Kawaauhau. The question is being asked by Dr. Geiger. Line 21,

"Q Did you ever discuss the costs of medical care with me?

"A I don't believe so.

"Q Costs of medication, for example?

"A I don't believe so.

"Q Okay. Or costs of laser treatment?

"A No.

"Q Okay. Okay. Before you — you know, when I cancelled the trip to Honolulu, did we talk about it?

"A No, I don't — we had no conversation at all. No, I don't — I don't remember it if we did.

"Q Okay. You don't remember. This is going to be a hard question for me to ask. Do you really want to get well?

"A Yes."

Next, Judge, we direct the Court's attention to Plaintiffs' [25] Exhibit 2, which is testimony of Solomon Kawaauhau.

MR. SHEEHAN: Hold on one moment.

MR. GOLDBERG: And we direct the Court's attention to page 14, line 19. These questions are being asked by the plaintiffs' counsel.

"Q Now, you heard what Dr. Geiger said in his opening statement when the case was just started?

"A Yes.

“Q You heard him say that your wife told him to cut the cost down. You heard that?

“A Yes, I heard that.

“Q You ever talk to Dr. Geiger about cutting the cost down on your wife’s medication?

“A She — I wouldn’t do that because my wife more important than cutting the cost down. He didn’t say anything about cutting the cost, but I felt if the cost is there, I rather my wife would be alive than the cost, you know, the expense, huh?”

Next, Judge, we turn our attention to Plaintiffs’ Exhibit 3, which is the deposition of Dr. Halford. Your Honor, this is only a 13 page deposition and we would feel that the whole thing is important, as well as all the exhibits attached. Would the Court like me to read through this entire deposition?

THE COURT: So, you’re requesting the Court take

* * *

[36]

PAUL GEIGER — DIRECT

A. Yes, they do.

Q And did you take any exams to be a doctor, to be licensed in a particular state?

A Yes. I took an examination to be licensed in Missouri and I also took a licensure exam in Hawaii.

Q When did you take your license in — when did you take your exam for you license in Missouri, Doctor?

A It was in 1966.

Q 1966?

A Yes.

Q And what year did you get out of medical school?

A 1966.

Q I see. And when did you take your exam to become licensed in Hawaii?

A I believe it was in 1971 or ‘72.

Q I see. Shortly after you got out of medical school where did you go to practice?

A I went and did an internship in Honolulu, Hawaii at St. Francis Hospital. It was a rotating internship and you’re exposed to all different kinds of patients.

Q Okay. How did you originally come in contact with Mrs. Kowahowa (phonetic)? And [sic] I pronouncing it correctly, Doctor?

A Kowahow (phonetic)

Q Kowahow (phonetic). How did you originally come in contact with her?

[37]

A She came to my office seeking to be a patient.

Q Seeking what, sir?

A To be a patient.

Q I see. Did she say she had a particular medical problem?

A Yes. She had several medical problems.

Q What were they, Doctor?

A They included diabetes, obesity, congestive heart failure, chronic obstructive pulmonary disease. I — when — yeah, those were the main problems she had.

Q I see. And about what year was that? Do you remember?

A I’m — without the record I’m guessing it would be about three years before the 1988 hospital — excuse me — the 1980 hospitalization, so it would be about 1977.

Q How long did you treat her, Doctor?

A Approximately three years.

Q From 1977 to 1980 approximately?

A That's right.

Q I see. Did you review her medical history before treating her?

A Yes, I asked her several questions and I gave her an examination when she first came in as a patient. And then I hospitalized her twice before the hospitalization under question. During those two hospitalizations she was critically ill, desperately ill with a combination of congestive [38] heart failure and her asthma or chronic obstructive pulmonary disease. And she improved both times.

Q Was she close to death?

A Yes, she was, both times, yes.

Q What years were that that you — do you remember the years, doctor?

A No, I don't.

Q Was it between '77 and '80?

A Yes.

Q Did you say she was close to death on those occasions?

A She was very close to dying, yes.

Q And were you her treating physician, Doctor?

A Yes, I was.

Q Okay. And did she ever, in fact, express concerns to you about cost?

A Yes, she did. On several occasions. And as I wrote in my hospital — I mean — excuse me — in my office records, she complained about the high cost of laser surgery that because of

her diabetes was necessary to preserve her sight. She also complained of — about the costs of medication that I prescribed for her. And she — I think another thing was she frequently did not keep her appointments to — you know, her follow up appointments because I think she couldn't afford the medical care.

MR. GOLDBERG: Objection. Calls for speculation, [39] Judge.

THE COURT: Sustained.

MR. SHEEHAN: Okay.

THE COURT: The laser surgery that you talked about, did she actually have the laser surgery?

THE WITNESS: Yes, Your Honor, she did, in Honolulu.

THE COURT: Okay. Now, you don't perform or did not perform any of the surgery that's involved in these cases, did you?

THE COURT: [sic] I assisted on the amputation, Your Honor.

THE COURT: Okay.

MR. SHEEHAN: I'm sorry. Would you repeat that? I didn't hear that.

THE WITNESS: I assisted at the amputation of the leg.

BY MR. SHEEHAN:

Q I see. The times that she was close to death, did you prescribe medication for her at that time?

A Yes. Yes, I did.

Q Do you remember what you prescribed, Doctor?

A I prescribed bronchial dilators or medication to open up her bronchial tubes. Digitalis or Digoxin preparations to make her

heart beat stronger. Diuretics to try and reduce her fluid overload. Also Insulin. Oh, and she was also [40] hypertensive, too. I forgot that. She had to — I had to manage her hypertension also.

Q All right. Getting more into the time that she — well, the incidents surrounding the loss of her leg, did she come to you for that, too?

A Yes, she did.

Q Any by the way, Doctor, did you charge her anything for any of this?

A Yeah. I charged the standard fees.

Q What were the standard fees? Do you remember?

A I'm guessing —

MR. GOLDBERG: Objection, Your Honor. This is irrelevant.

THE COURT: Overruled.

THE WITNESS: I remember for her hospitalization for the amputation my total charge was \$300.00 including — and that included the assisting at the time of surgery. She was in the hospital about two months.

BY MR. SHEEHAN:

Q Did you ever get paid anything?

A Yes, I did.

Q Do you remember about how much?

A I think she paid the whole bill.

Q About how much was that?

A About \$300.00.

[41]

Q Okay. Was that for her treatment over the entire three years?

A No, that was just for that — that was just for the hospitalization involving her amputation.

THE COURT: That's a — but did you say three months that she was in the hospital?

THE WITNESS: Well, she was — altogether — part of that time was in what's called Skilled Nursing, Your Honor.

THE COURT: Uh-huh.

THE WITNESS: I think two to three months. Probably two.

THE COURT: So the \$300.00 represented your services for that two or three months?

THE WITNESS: Yes, Your Honor.

THE COURT: How old was she?

THE WITNESS: She was in her early fifties, Your Honor, I'm pretty sure. I'm not completely sure on that.

THE COURT: Okay.

BY MR. SHEEHAN:

Q Standard fees, I didn't know — bear with me. I didn't know there were standard fees.

MR. GOLDBERG: Objection, Judge.

THE COURT: Sustained.

MR. SHEEHAN: Yeah, that's fine.

BY MR. SHEEHAN:

[42]

Q Who usually pays for the medicine?

A The patient.

Q Okay. Did you hear me read what is known at Exhibit 4, their exhibit, Creditors' Exhibit 4?

A I'm — yes, I heard —

Q You heard me read from the record?

A Yes, that's right.

Q Do you remember reading at the lower court trial, do you remember reading that into the transcript?

A Yes, I do.

Q Were those your words, Doctor?

A Those were my words quoting from the record.

Q What were you reading when you read that?

A I was reading from the Skilled Nursing nurse's notes.

Q I see. Who was that skilled nurse?

A I — without the record, I wouldn't know.

Q Was it a hospital nurse?

A Yes, it was a hospital nurse.

Q By skilled nurse you mean a particular person that was there?

A Okay. Yes, it was a nurse in Hilo Hospital.

Q I see. Did Mrs. Kawaauhau ever express to you a concern for medical expenses?

A Yes, she did.

Q Okay. What did she tell you to do?

[43]

A Okay. As a condition for her being admitted to the hospital in order to try and save her leg, she said I had to keep the cost to a minimum and on top of that I had to keep it quiet or not tell

anybody about the fact that I was to keep costs at a minimum. I had — you know, she like told me not to disclose that information to anybody.

Q Why did she tell you to do that, Doctor?

MR. GOLDBERG: Objection.

THE COURT: Sustained.

BY MR. SHEEHAN:

Q Okay. Did she tell you why she was concerned about that?

A No.

Q Okay. Doctor, did you put that into the record?

A No, I couldn't because that would be a disclosure.

Q I see. Did you cover up any records?

A No, I never covered up any records.

Q Did you alter any records?

A No, sir.

Q Did you know that -- so it was a nurse who put that into the record, is that correct, sir?

A That's correct. What I read, yes, that was put in by the nurse.

Q I see. Did you hospitalize her, Doctor?

A Yes, I did.

Q What was her condition when you hospitalized her? And I [44] want to concentrate on the time that she lost her leg. Tell us about what happened when she came in your office and the series of events that led to your hospitalization of her.

A Well, as soon as I — I hospitalized her the day that she came into the office with this infection. She also had — okay, she had puss [sic] coming out from underneath her great toenail. She also had a very painful calf. Okay. And my concern was that with her

extremely delicate cardiopulmonary condition that if she had a clot go from her calf into her lung it would probably kill her. So I want — my treatment when I hospitalized the lady was — there's like two prongs to it. One was anticoagulation to prevent further clot formation and the other one was antibiotics to treat the infection.

Q Go ahead. What happened then, Doctor?

A Okay. So I gave her Heparin, which is a very fast acting anticoagulant. I also gave her Coumadin, which is a slower acting anticoagulant and it's a lot cheaper. Because of the cost constraints I only gave her enough Heparin till where the Coumadin took over, so to speak. Okay. They have overlapping effects on the body. Okay. Another thing is that the antibiotics have a profound effect on Coumadin, which is a [sic] anticoagulant and this became important because her prothrombin time became so prolonged. You know, she was —

[45]

THE COURT: You've got to understand that I'm not a doctor.

THE WITNESS: Okay. Yeah.

THE COURT: So when you say — some of this I can follow you, but I — and I understand that you've been saying so far about the Heparin, but this last phrase you used I don't have the slightest idea what you're talking about.

THE WITNESS: Okay. Let me explain what that is. A prothrombin time is a measure of the clotability of blood. And in a normal person it's approximately 13 to 15 seconds. And then when you give Coumadin you want to extend that time out to about 20 to 30 seconds. Okay, at the time I discontinued her antibiotics her prothrombin time was 80 seconds, you know, indicating that she could have bled to death. Or another possible complication is that she could have had an intracranial hemorrhage and had a stroke and died that way, too. Okay.

BY MR. SHEEHAN:

Q Let me interrupt you, Doctor.

A Yes.

Q Were you personally treating her at this time?

A Yes, I was.

Q I see. And would you consider this a life-threatening situation?

A Yes.

[46]

Q Okay. Did you realize she might lose her leg?

A Yes, I did.

Q Go ahead, Doctor. Continue with what happened.

A Okay. I started Tetracycline. I had took cultures from her leg. I also took another culture from a blister that developed on her calf. They both grew out this strep bug or it's called streptococcus pyogenes.

Q Is that a germ?

A Yes. Excuse me. It's a bacteria. We did sensitivity tests to the particular bacteria. What that means is we plated the bacteria on an agar plate and then we put discs of antibiotics on the plate also to see what antibiotic would be most effective against this particular streptococcus. And Tetracycline — according to that test, the Tetracycline was a very excellent drug to give her.

Q Did you actually do this yourself, Doctor?

A No.

Q Did you oversee it?

A I over — yeah, I oversaw it in the bacteriology laboratory at Hilo Hospital. I had a pretty good relationship with a technician there and we looked at the plates daily.

Q Is the use of Tetracycline — let me see if I understand. You tested what this germ was that she had, or bacteria, to see if this particular antibiotic would have an effect on it, is that what you're saying.

[47]

A That's what I'm saying, yes.

Q And that did have an effect on it?

A Yes.

Q Did it kill it or —

A It killed it, yes. Uh-huh.

Q Oh. Is Tetracycline commonly used?

A Tetracycline, it has been used against streptococcus, yes.

Q I see. Is it commonly used? Is Tetracycline commonly used?

A It's — I'd say Penicillin is more commonly used against strep.

Q I see. But is Tetracycline commonly used?

A Yes, it's commonly used, yes.

Q Is Penicillin also commonly used?

A Yes.

Q As long as you brought that up.

A And other drugs include Erythromycin, Cephalosporin. Actually, according to the sensitivity tests there was only one antibiotic that failed to kill this particular strep. And that —

Q What was that, Doctor?

A That was Amikacin, which is an aminoglycoside. That's a [sic] antibiotic that's good for so-called gram negatives like the bacteria that grow in our colons. But streptococcus is a so- [48]

called gram positive bug and this particular one is sensitive to all antibiotics except for one.

Q Now, did you say there was one test given or two tests? I think you called them plate culture tests?

A There were two.

Q Two. And did you —

A One was — excuse me. One was from the toe and one was from the blister.

Q Did you direct that this be done, Doctor?

A Yes, I did.

Q Was that your decision?

A Yes.

Q Okay. Go ahead, Doctor. Then how many days are we into the hospital stay now, about?

A I think the second or third day.

Q I see.

A Okay. And her blood pressure dropped somewhat. So I gave an intravenous dose of Vibramycin, which is a form of Tetracycline. There were — there are two reasons — well, there's a reason that I started with Tetracycline was because I didn't know what the culture was going to show initially. You know, you start it with a broad spectrum antibiotic.

Q Is Tetracycline a broad spectrum?

A Yes, it's a very broad spectrum.

Q Is that a typical medical procedure that you start with a [49] broad spectrum antibiotic?

A I think so, yes.

Q Okay.

A Okay. Also — I proceeded with her anticoagulation and that went alarming — in other words, her anticoagulation proceeded too fast to a dangerous level, so I had to try and reverse it by giving her oral vitamin K to try and — you know, I didn't want her blood to be too thin or have too much of a propensity to bleed.

Q Well, this is the third day, Doctor, right?

A Uh-huh.

Q Were you visiting her every day?

A Yes, I was.

Q And were you — I don't know how a doctor makes determinations of these things, but were you treating her to make determinations on a daily basis?

A Yes, I was.

Q Okay.

A I was examining her, examining her leg and changing the medications as directed. Now, then after I gave the intravenous dose of Tetracycline, the next day the patient, number one, she refused to have her blood tests so that I could, you know, monitor how her anticoagulation was proceeding. Also some other blood tests to check on the status of her kidneys. Just a blood count to just check on — make sure she wasn't [50] bleeding, you know, that her blood —

Q What do you mean she refused blood tests, Doctor?

A She refused it. She told the lab technician, "I'm sorry. I'm not going to —"

MR. GOLDBERG: Objection, Your Honor, hearsay.

THE COURT: Overruled. Go ahead.

THE WITNESS: She said, "I don't want these blood tests." And then when I came in —

THE COURT: That was about the third day you say?

THE WITNESS: Approximately the second or third day, Your Honor, yes. That morning I came in and she complained bitterly that the single injection of Tetracycline had cost \$27.00 and she just couldn't afford these tests.

BY MR. SHEEHAN:

Q Did you tell her at that time, Doctor, that she needed this type of test? Did you say, "You need tests"?

A Yes. And she absolutely refused.

Q How long did you talk to her? Did you discuss it with her, sir?

A I talked to her for about 15 minutes. She — at the end she just rolled over in bed and turned her back on me.

Q How often were you seeing her on a daily basis, sir?

A Well, every day. Sometimes twice a day, but usually once a day.

[51]

Q All right. Go ahead. What happened next, Doctor?

A Okay. After her leg got worse, I changed her medication to Penicillin, but I gave it by the oral route because intravenous Penicillin would have cost \$40.00 per day, whereas oral Penicillin only cost \$4.00 per day and she had a gastrointestinal tract that worked quit [sic] well. In other words, her gastrointestinal tract had absorbed the Coumadin as evidenced by her increased bleedability, so to speak, and so I knew her — she was absorbing the medications that I was giving. She had — in other words, she was absorbing the Penicillin and the antibiotics that I was giving orally.

Q Did you — how did you know that this particular price was what it was, Doctor?

A I went up to the pharmacist —

Q And you checked?

A — and I discussed the price with him.

Q I see.

A The hospital pharmacist.

Q Did she ask — did you inform her of the cost?

A She wasn't — she just would not discuss expensive medication with me, you know.

Q Well, how did she know that was an expensive medication, Doctor?

MR. GOLDBERG: Objection.

MR. SHEEHAN: Yeah, okay. I withdraw that question.

[52]

BY MR. SHEEHAN:

Q Go ahead, Dr. Geiger.

A Okay. Let's see. Her condition — I think it was — I remember it was a Friday, I — I — okay, I had to go to a medical conference in Honolulu. I arranged for a substi — a doctor to take over in my absence. I even introduced Dr. Walker to Mrs. Kawaauhau and showed him the problem and we discussed management of the case.

Q How long were you gone, Doctor?

A I was gone over — I left Friday night, came back Sunday evening. And I saw her Sunday — excuse me — Monday morning.

Q Approximately how long was she in the hospital for this stay, do you remember?

A Approximately six days.

Q And every other day — did you see her every day except for this period that you were gone?

A That's right, yes.

Q Now, who was this person you said you asked to watch out for her?

A Dr. Murray Walker.

Q Is he a licensed physician, to the best of your knowledge?

A Unfortunately, he's deceased. But he was a lic —

Q Well, was he? Was he?

[53]

A Yes, uh-huh.

Q Was he a practicing physician at that hospital?

A Yes, he was on the staff of Hilo Hospital, that's correct.

Q And you had business — not business dealings, but medical dealings with him in the past?

A Yes, I did.

Q Did you have confidence in his ability?

A Yes.

Q And did you ask him to watch over her because of that confidence?

A Yes.

Q And did he, in fact, watch over her, Doctor?

A Yes, he did.

Q Did he visit her daily?

A I don't know. I wasn't there.

Q Okay. But you do believe he did watch over her?

A Yes.

Q Okay, Doctor. Then what happened after you got back?

A Okay. In my absence he had gotten a surgical consultation from a Dr. Wong (phonetic), who advised her to be — advised —

MR. GOLDBERG: Your Honor, this is all hearsay.

THE COURT: Yeah, we are getting into a lot of hearsay. So I'll sustain the objection. Although it struck [54] me that — well, I'll sustain the objection. Go ahead.

BY MR. SHEEHAN:

Q All right. Go ahead. After you got back, Doctor, then —

A Okay.

Q Did you review — did this doctor write records?

A Yes, he did.

Q Did you review those records?

A Yes, I did.

Q In fact, did you review all medical records all the way through this entire thing?

A Yes, Mr. Sheehan.

Q Did you review all medical records anytime you treated her?

A Yes, I did.

Q Okay. Then after you got back, Doctor, then what happened?

A Okay, then she started — the skin of her leg had turned black. We took cultures again and at this time there was no growth. In other words, I felt the infection in her leg had burned itself out. In addition to that her kidney function had deteriorated somewhat and she was — also had developed a cough. I took a sputum culture and it grew out a yeast, what is called candida albicans. And this was evidence of what I call superinfection.

[55]

Q This is a test for infection, Doctor?

A Yeah.

Q Okay.

A That's right. It's a test of what is causing a lung infection. Okay. Also I repeated her prothrombin time and I found it to be dangerously elevated. As I mentioned, it was around 80 seconds. So I —

Q What does that mean, Doctor?

A It means she could bleed to death.

Q She could?

A Could yes. Or she could have a cerebral hemorrhage, which could kill her.

Q Okay.

A Let me think. That's all. So, okay, I stopped her antibiotics because one of them increased the bleeding tendency even more than, you know, Coumadin..

Q What was that, Doctor? What antibiotic are we —

A It was a Cephalosporin type antibiotic and I don't remember the exact name. I just remember the category.

Q So you stopped that?

A Yeah. And I — there —

Q And what was your reason for stopping that again?

A Because it was increasing her tendency to bleed. Also she had — at this time she had developed a profuse uterine [56] bleeding, too. I obtained a OB-GYN consult and he examined her. I also obtained a consultation from a general surgeon and he recommended amputation because of her medical — multiple medical problems.

Q Did you ever discontinue — I think you just said you discontinued treatment — not treatment, but what was it?

A Antibiotics.

Q Antibiotics?

A Yeah.

Q What were your reasons for discontinuing?

A Okay. I had four. Number one, as far as I could tell by — you know, by testing the leg and culturing it, there were no more — the strep was gone. Okay. And there was a negative culture. She had been on antibiotics for eight days now, okay. Number two, she was developing signs of a superinfection. And what I mean by superinfection is when you use antibiotics for prolonged periods you have a growth of resistant strains or unusual bacteria. And in her case she had yeast growing out of her sputum, which is very unusual. It's not —

Q Doctor, what's a sputum? I don't —

A Okay. That's some — like phlegm.

Q Oh.

A Okay. So she had a very unusual — it's very unusual for people to have yeast growing out of their phlegm.

[57]

Q Yeah. Go ahead.

A So — and the reason that it happened was because of her high dose of antibiotics. Okay. Also her kidney function was deteriorating and I — because her kidneys were deteriorating her blood levels of antibiotics were quite high. You know, in other words, that's the way a lot of antibiotics get out of the system is through the kidneys. Okay. And since her kidneys were deteriorating, that's another reason I stopped antibiotics because I felt she was getting toxic from the antibiotics she had received.

Q How long did you discontinue? Oh, I'm sorry, Doctor. Strike that. You had a fourth reason. Didn't you say you had four reasons:

A Let's see. Yeah, the fourth reason was the antibiotics were contributing to her thinning of the blood, so to speak. In other words, the blood was less coagulable because of the antibiotics.

Q Now, what did you discontinue? What medications did you actually discontinue?

A The Cephalosporin antibiotic and I think one or two other antibiotics that Dr. Walker had ordered in my absence.

Q Were the — I need to — this is — was the medication in her system?

A Yes, it was.

Q Can you measure that?

[58]

A Yes, you can.

Q Did you measure it?

A No, I didn't.

Q How do you know it was in her system?

A It was inject — in these cases it was injected into her system.

Q So you knew it because of the injection?

A I presume, yeah, it was in her system.

Q I see. How long did you discontinue?

A Approximately two days. Then the general surgeon restarted a form of Penicillin when he — you know, when I consulted him.

Q Did you treat her on those — at that two day period?

A Yes, I did.

Q Were you there with her every day?

A Yes.

Q Trying to make the new determinations of her condition?

A That's right.

Q Okay. Go ahead, Doctor. Then what happened?

A Then we waited for a bit and then Dr. Oldfather (phonetic) the surgeon, thought it would be best to amputate her leg and I agreed, reluctantly. I had — quite frankly, if her condition had — if —

MR. GOLDBERG: Objection, Your Honor. This is nonresponsive.

THE COURT: Sustained.

[59]

BY MR. SHEEHAN:

Q Okay. What was her condition, Doctor?

A Her condition was very grave. I felt that amputation was necessary to save her life.

Q Where did the amputation take place?

A It took place below the knee and — I mean — you mean the operation or the —

Q Well, go ahead, answer it that way, please.

A It was a below the knee amputation and it was — it took place in the operating room of Hilo Hospital.

Q And was that your hospital?

A Yeah. I was on the staff of Hilo Hospital.

Q Oh, I see. All right. Just a — then did she ever — how long before she left the hospital, Doctor?

A Okay. After that period she stayed in the — what we call the acute section of the hospital for about another week and then

she was sent down to what we call skilled nursing where she stayed about six weeks. During that time she — her kidney function, which had deteriorated, improved. Also her white blood cell count slowly dropped. Her uterine bleeding stopped. And with iron treatment and transfusions, transfusions ordered by Dr. Oldfather, the surgeon, her — she was also anemic, by the way. I forgot to mention that. Anyway, her blood count came back to normal. She — her stump healed. She had to have a couple of — on the day of

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Q Doctor, as to the home visits, did you — was there any reason why you wanted her to come into the office?

A Yeah, as I explained, I wanted to weigh her and I also wanted to do a thorough female examination, which I couldn't do at the home.

Q Why not, Doctor?

A I don't think that was the place. I like to — why — it's my custom to have a nurse present when I do that kind of examination.

Q Does it require any special equipment?

A Yeah, it does. It requires a vaginal speculum, which is quite portable and it could be used in the home, but it also requires special lighting, too.

Q I see. Doctor, did you explain the difference between Tetracycline and — or did you — strike that. Did you explain the difference between oral and intravenous antibiotics?

A No, I don't think I ever did.

Q You did not explain that difference to her?

A No, I don't think so.

Q Did you explain the difference between —

A Or I don't know. Don't know.

Q I see.

A I may have, but I don't know.

Q Did you explain the difference between Tetracycline and [63] Penicillin?

A I don't think she'd be able to understand that, so I don't think I under — I don't know if I — I don't know.

Q Did you talk to her about the entire situation?

A Yeah, I did.

Q — medically?

A Yes, I did.

Q Her medicine that she was being given?

A Yeah. Yes, I did.

Q But what you're not sure of is whether or not you gave her the exact details of —

A I don't know if I went into — I don't think I went into technical details. I explained to her that I thought — what I thought was necessary.

Q What did you tell her, Doctor?

A I thought she needed intravenous antibiotics. She refused point blank.

Q Okay. Now Doctor, you sat her [sic] during the opening arguments and you heard learned counsel say that you fled the jurisdiction of Hawaii. Now, when you came to St. Louis, why did you come to St. Louis?

A There were several reasons. I was pretty depressed by my medical malpractice case, I have to admit. And I — there was — that's a — there are a lot of reasons, you know. I thought — there are a lot of reasons.

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Q Was this a well known case in —

A I don't know. That's hard to say.

Q Did you [sic] colleagues know of it, Doctor?

A Yeah, they did, uh-huh.

Q Were you embarrassed by it?

A Yes. Yeah, I'm — I — you know, any time anything happens like that, you know — yes.

Q Doctor, why did you pick Missouri to come to?

A I had a license to practice here and I needed, you know, to continue to make a living.

Q I see.

MR. SHEEHAN: One moment, Your Honor.

BY MR. SHEEHAN:

Q Dr. Geiger, have you ever harbored wilful or evil thoughts towards this person?

A No, I never have.

Q Did you ever do anything to try to hurt her?

A No.

Q Before you decided on Tetracycline, did you refer to any particular professional documents or books or anything like that?

A Yes, I did. I referred to the Physicians' Desk Reference and I also in my studies I referred to a text book called Goodman & Gilman (phonetic), which is a textbook of pharmacology.

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Q What did the books say about Tetracycline, Doctor?

A It's an excellent —

MR. GOLDBERG: Objection, Your Honor.

THE COURT: Overruled

THE WITNESS: It's an excellent broad spectrum anti-biotic.

BY MR. SHEEHAN:

Q Do you have the book with you today, Doctor?

A Yes, I have the Physicians Desk Reference.

Q This book right here?

A Yes, sir.

Q Can you show us where — this is the book you referred to?

A Well, that's a 1990 [sic] edition. I would have referred to a 1983 edition.

MR. GOLDBERG: Your Honor, if I might interject something. I don't believe we're here to argue whether or not Dr. Geiger committed medical malpractice. That's collateral estopped binding upon this Court.

THE COURT: Well, you know, it's kind of hard to draw that line because although we're not going to retry the medical malpractice and there no question a verdict was rendered against the doctor and he was found guilty of medical malpractice and a judgment was rendered, but on the other hand you're asking me not to discharge this for the reason

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him testify to this fact.

THE COURT: Or I think he actually already testified to it. Let me see if I can understand what the Doctor did. As I recall from your testimony, Doctor, prior to your pursuing a course of action as to what kind of medication to give this lady you went

to two reference books. One is Goodman & Gilman and the other was the Physicians' Desk Reference book.

THE WITNESS: That's correct.

THE COURT: And are these standard books?

THE WITNESS: Yes, Your Honor.

THE COURT: Commonly used by general practitioners?

THE WITNESS: Yes, Your Honor.

THE COURT: Commonly used in hospitals?

THE WITNESS: In hospital libraries, yes, Your Honor.

THE COURT: And you made reference to both of these and after you did was there anything that was different as far as the information provided in the two books? Did you come to the same conclusion after you looked at the two books as to what medication you could use?

THE WITNESS: Yeah, I decided that I would proceed the way I did.

THE COURT: Which was to use what initially?

THE WITNESS: Tetracycline, since it's a broad [72] spectrum antibiotic.

THE COURT: Okay. And I would assume the phrase broad spectrum antibiotic means that it's going to cover like a multitude of sins or a multitude of problems as opposed to something that's very narrow to a certain particular problem?

THE COURT: [sic] That's correct, Your Honor.

THE COURT: Okay. And would the same thing have been true of Penicillin?

THE WITNESS: Penicillin has a narrower spectrum. It generally treats the so-called gram positive organisms.

THE COURT: Are there any disadvantages in using broad spectrum drugs as opposed to something narrow?

THE WITNESS: Yes. Yeah, you can get into the problem of superinfections. In other words, you kill off everything, Your Honor.

THE COURT: Okay. Anything further?

MR. SHEEHAN: We rest, Your Honor. Thank you very much.

THE COURT: Okay. Any cross-examination?

MR. GOLDBERG: Judge, may I have a minute?

THE COURT: All right.

MR. GOLDBERG: Judge, I just have a couple of quick questions to ask Dr. Geiger.

THE COURT: I'm sorry, I didn't realize you were standing. Go right ahead.

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CROSS-EXAMINATION

BY MR. GOLDBERG:

Q Dr. Geiger, when Mrs. Kawaauhau was admitted to the hospital you were aware that she had a life-threatening — possible life-threatening illness, is that correct?

A Yes.

Q And isn't it true that when you prescribed this Tetracycline you did not even prescribe the maximum dosage that she could absorb in her body?

A The reason I did that —

Q It that true, Dr. Geiger?

A Well, I gave the standard dose.

Q Well, my question is to you, sir, even though you knew that she had a life-threatening illness, you did not prescribe the maximum permissible dose according to the PDR, is that correct?

A I prescribed a standard dose, sir.

Q The standard dose for a life-threatening infection, is that correct?

A The standard dose for a infection of the foot. Her —

Q A standard dose, Doctor, if I was going to see you for a pimple or a strep throat, you would prescribe the same dosage that you prescribed to Mrs. Kawaauhau, 250 milligrams every six hours?

A That's what I gave to her because Tetracycline has to —

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